

Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTH STAR FISHING COMPANY LLC, a  
Washington limited liability company,

Plaintiff,

and

EASTERN SHIPBUILDING GROUP, INC., a  
Florida corporation,

Plaintiff,

v.

NORWEGIAN HULL CLUB, a mutual  
insurance company organized under the  
Laws of Norway; RSA INSURANCE GROUP  
PLC, f/k/a ROYAL & SUN ALLIANCE  
INSURANCE PLC, a general insurance  
company organized under the Laws of Great  
Britain; BRIT SYNDICATE 2987, a Lloyd's of  
London insurance syndicate, acting through  
BRIT SYNDICATES LIMITED, its managing  
agent; MARKEL SYNDICATE  
MANAGEMENT 3000, a Lloyds of London  
insurance syndicate, acting through  
MARKEL SYNDICATE MANAGEMENT  
LIMITED, its managing agent; QBE MARINE  
& ENERGY CSN 1036, a Lloyd's of London  
insurance syndicate, acting through QBE  
UNDERWRITING LIMITED, its managing  
agent; THE CHANNEL SYNDICATE 2015, a  
Lloyd's of London insurance syndicate,  
acting through THE CHANNEL

NO. 2:21-cv-01438-JLR

PLAINTIFF NORTH STAR FISHING  
COMPANY'S RESPONSE IN  
OPPOSITION TO DEFENDANTS'  
MOTION TO STAY PROCEEDINGS AND  
TRANSFER ACTION TO THE  
NORTHERN DISTRICT OF FLORIDA

MANAGING AGENCY LIMITED, its  
 managing agent; NEON 2468, f/k/a  
 MARKETFORM 2468, a Lloyd's of London  
 insurance syndicate, acting through NEON  
 UNDERWRITING LIMITED, its managing  
 agent; and AGCS MARINE INSURANCE  
 COMPANY, a general insurance company  
 organized under the Laws of Illinois,  
 Defendants.

Plaintiff North Star Fishing Company LLC ("North Star") respectfully  
 submits this Response and the accompanying Declaration of J.D. Stahl in opposition to  
 Defendants' Motion to Stay Proceedings and Transfer Action to the Northern District of  
 Florida (Dkt. 9).

### SUMMARY OF ARGUMENT

North Star and its co-Assured under the subject insurance policy, plaintiff  
 Eastern Shipbuilding Group, Inc. ("Eastern")—both have moved the Florida district court  
 to abstain from hearing the Insurers' related, anticipatorily-filed declaratory action there in  
 favor of this Washington action, as an exercise of the district court's discretion under the  
 Declaratory Judgment Action, 28 U.S.C. § 2201.<sup>1</sup> In their opposition to those motions, the  
 Insurers have explicitly argued that, as the "first-filed" forum, the Florida district court "*is*  
*the appropriate court to decide whether the second-filed suit must be dismissed, stayed, transferred*  
*and/or consolidated.*"<sup>2</sup> The Insurers argue likewise in their motion here.<sup>3</sup> North Star agrees.

But instead of waiting for the Florida district court to determine whether or  
 not it will entertain the Insurers' anticipatorily-filed declaratory action, the Insurers have  
 also moved this Court to stay this action and transfer it to Florida.

<sup>1</sup> Stahl Decl., Exs. A – D.

<sup>2</sup> *Id.*, Ex. E at 32.

<sup>3</sup> Motion at 11 (Dkt. 9 at 11).

1 The related Florida action is a textbook example of an anticipatorily-filed  
 2 declaratory suit – commenced by the Insurers for strategic forum-shopping advantage just  
 3 13 days after receiving the plaintiff Assureds’ August 26, 2021 pre-suit notice letter under  
 4 the Washington Insurance Fair Conduct Act (“IFCA”), RCW 48.30.015. *See Keystone Fruit*  
 5 *Marketing, Inc. v. National Fire Ins. Co. of Hartford*, 2011 WL 3293390 \*5 (Slip Op., August 1,  
 6 2011, E.D. Wash.) (declaratory action filed 13 days after pre-suit IFCA notice letter and  
 7 seven days before insured could bring suit indicative of an anticipatory action). Under the  
 8 anticipatory suit exception to the first-filed rule – recognized by both the Eleventh Circuit  
 9 and the Ninth Circuit – the Insurers’ Florida action is entitled to no special deference as the  
 10 first-filed action. *See, e.g., Collegiate Leasing Co. v. American Cas. Co. of Reading, Pa.*, 713 F.3d  
 11 71, 79 (11<sup>th</sup> Cir. 2013) (“In that circumstance, the ‘first-filed’ court can decline to invoke the  
 12 first-filed rule to retain the strategically filed action.”); *Alltrade, Inc. v. Uniweld Products, Inc.*,  
 13 946 F.2d 622, 628 (9<sup>th</sup> Cir. 1991) (“The circumstances under which exception to first-to-file  
 14 rule typically will be made include bad faith [citation omitted], anticipatory suit and forum  
 15 shopping [citations omitted].”).

16 The Florida district court’s decision whether to abstain from hearing the  
 17 Insurers’ declaratory action there will turn on essentially the same considerations raised in  
 18 the Insurers’ motion here: the anticipatory suit exception to the first-filed rule, the two  
 19 forums’ relative nexus with and interests in the underlying insurance coverage disputes,  
 20 the convenience of the parties, and the location of witnesses and evidence. Given that the  
 21 parties agree that the Florida district court, as the first-filed court, should decide in which  
 22 forum this litigation should proceed, this Court should reject the Insurers’ attempt to get  
 23 “two bites of the apple” by bringing this duplicative motion here. The Court should  
 24 instead deny the Insurers’ motion and allow discovery in this action to proceed pending  
 25 the Florida district court’s determination. Regardless of which forum ultimately  
 26

1 adjudicates this dispute, allowing discovery to proceed here in the interim will prejudice  
2 no one and will serve the interests of justice and a timely resolution of this dispute.

### 3 FACTUAL AND PROCEDURAL BACKGROUND

4 North Star is a fishing company organized under the laws of Washington  
5 with its headquarters in Seattle, Washington.<sup>4</sup> In December of 2015, North Star entered  
6 into a contract with Eastern for the construction of a new vessel (eventually to be named  
7 the “NORTH STAR”) at Eastern’s shipyard in Panama City.<sup>5</sup> In connection with the new  
8 vessel construction project, North Star procured the builders risk Policy that is the subject  
9 of this declaratory judgment action.<sup>6</sup> North Star and Eastern are the named Assureds  
10 under the Policy.<sup>7</sup>

11 North Star procured the Policy in Washington through Gallagher, its Seattle-  
12 based broker.<sup>8</sup> The Policy was issued in Seattle, Washington on January 20, 2016, as stated  
13 on the second page of the Policy.<sup>9</sup> No one located in Florida was involved in  
14 communications with the Insurers regarding the procuring, placement or issuance of the  
15 Policy.<sup>10</sup> Likewise, none of the Insurers subscribing to the Policy are citizens of Florida.<sup>11</sup>

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18 <sup>4</sup> Complaint (Dkt. 1-4) ¶ 2.

19 <sup>5</sup> *Id.* ¶ 8.

20 <sup>6</sup> *Id.* ¶ 9.

21 <sup>7</sup> *Id.* ¶ 1.

22 <sup>8</sup> *Id.* ¶ 9; Supplemental Declaration of James C. Johnson in Support of Motion to Dismiss First Amended  
23 Complaint (Stahl Decl., Ex. C) ¶ 4.

24 <sup>9</sup> Complaint ¶ 9; Policy (Dkt. 11-4 at 7).

25 <sup>10</sup> Supp. Johnson Decl. ¶ 6.

26 <sup>11</sup> Notice of Removal of Action (Dkt. 1) ¶¶ 10-21.

1 Eastern launched the vessel from its slipway on April 19, 2018, but the vessel  
2 was far from completed at that point.<sup>12</sup> On October 10, 2018, the NORTH STAR was caught  
3 by Hurricane Michael as the eye of the storm passed over Panama City. The NORTH  
4 STAR broke loose from its mooring, drifted across a waterway, grounded and flooded,  
5 sustaining substantial damage.<sup>13</sup>

6 As the party who had procured the Policy through its Seattle-based broker,  
7 and had the policy delivered to it in Washington, North Star took the lead in administering  
8 the insurance claim arising from the casualty, with the full participation and cooperation of  
9 Eastern.<sup>14</sup> In the course of the claim, substantial disputes arose between the Assureds and  
10 the Insurers regarding the extent of coverage available to North Star and Eastern under the  
11 Policy, particularly with respect to the Escalation Clause of the Policy.<sup>15</sup> The parties  
12 exchanged a series of correspondence regarding those coverage disputes over several  
13 months.<sup>16</sup> Virtually all of this correspondence was between Mr. Johnson, of North Star,  
14 and Ms. Knudsen of Norwegian Hull Club, the lead underwriter on the Policy, located in  
15 Bergen, Norway. Eastern was copied on all, or virtually all, of this correspondence.<sup>17</sup>

16 After months of correspondence failed to resolve the disputes, North Star and  
17 Eastern jointly issued a pre-suit notice letter to the Insurers on August 26, 2021.<sup>18</sup> The  
18 Assureds' pre-suit notice letter stated that it was intended to fulfill the pre-suit notice

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19 <sup>12</sup> Supp. Johnson Decl. ¶ 7.

20 <sup>13</sup> *Id.* ¶ 8; Complaint ¶ 18.

21 <sup>14</sup> Supp. Johnson Decl. ¶ 9.

22 <sup>15</sup> *Id.* ¶ 10; Complaint ¶¶ 22-26, 30.

23 <sup>16</sup> Supp. Johnson Decl. ¶ 10; Complaint ¶ 30.

24 <sup>17</sup> Supp. Johnson Decl. ¶ 10.

25 <sup>18</sup> Complaint ¶¶ 30, 32; Declaration of Tonje Knudsen, Ex. 5 (Dkt. 10-5).

requirements of both the Washington Insurance Fair Conduct Act, RCW Chapter 48.30, and the Florida Insurance Bad Faith Statute, Fla. Stat. § 624.155.<sup>19</sup> The notice letter advised the Insurers that North Star and Eastern intended *“to pursue legal action to enforce their rights under the Policy and obtain legal redress for the Insurers’ bad faith unless the Insurers promptly comply with their obligations.”*<sup>20</sup> The letter also requested *“that the Insurers submit to venue in the Superior Court of Washington for King County, pursuant to the Institute Service of Suit Clause (U.S.A.) of the Policy.”*<sup>21</sup>

Just 14 days after receiving the Assureds’ pre-suit notice letter (and before the 20-day pre-suit notice period under the Washington Insurance Fair Conduct Act had run), the Insurers commenced a declaratory judgment action in the Northern District of Florida on September 9, 2021.<sup>22</sup> The Insurers ignored the Assureds’ request that the Insurers submit to venue in the Superior Court of Washington for King County as the forum for resolution of these disputes.

Promptly after the 20-day pre-suit notice period under the Washington Insurance Fair Conduct Act expired, North Star and Eastern commenced their action against the Insurers in the Superior Court of Washington for King County, asserting claims for breach of contract, common law insurance bad faith, breach of the Washington Consumer Protection Act, breach of the Washington Insurance Fair Conduct Act, and declaratory judgment.<sup>23</sup> The parties in the proceeding here in Washington are identical to the parties in the Florida action.

<sup>19</sup> Knudsen Decl., Ex. 5 (Dkt. 10-5 at 2).

<sup>20</sup> *Id.* (Dkt. 10-5 at 4).

<sup>21</sup> *Id.* (Dkt. 10-5 at 7).

<sup>22</sup> Declaration of Garrett S. Garfield, Ex. 3 (Dkt. 11-3).

<sup>23</sup> Complaint (Dkt. 1-4).

On September 29, 2021, North Star moved the Florida district court to dismiss the Insurers' original Complaint for Declaratory Judgment in that forum for lack of subject matter jurisdiction or, alternatively, to abstain from entertaining that action in the exercise of its discretion under the Declaration Judgment Act.<sup>24</sup> Eastern filed its Notice of Joinder to North Star's motion on October 4.<sup>25</sup> In response to the Assureds' motion, the Insurers filed a First Amended Complaint for Declaratory Relief on October 12.<sup>26</sup>

On October 21, the Florida district court entered its Order Denying as Moot the Motion to Dismiss the Original Complaint.<sup>27</sup> In the Order, the Florida district court ruled that North Star and Eastern were correct that the case is not within the Court's admiralty jurisdiction and that the declaratory judgment statute does not provide an independent basis for subject matter jurisdiction. The Court further ruled, however, that the Insurers' Amended Complaint apparently included allegations sufficient to bring the case within the Court's diversity jurisdiction, and on that basis denied as moot the motion to dismiss the original Complaint. The Court invited the Assureds to again present the declaratory judgment abstention issue in any motion directed to the Insurers' Amended Complaint.<sup>28</sup>

On the same day, October 21, 2021, the Insurers removed North Star's and Eastern's Washington state court action to this Court.<sup>29</sup>

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<sup>24</sup> Garfield Decl., Ex. 3 (Dkt. 11-3 at 5).

<sup>25</sup> *Id.*

<sup>26</sup> Garfield Decl., Ex. 1 (Dkt. 11-1).

<sup>27</sup> Garfield Decl., Ex. 2 (Dkt. 11-2).

<sup>28</sup> *Id.*

<sup>29</sup> Notice of Removal of Action (Dkt. 1).

On November 4, 2021, North Star and Eastern both moved the Florida district court to dismiss the Insurers' Amended Complaint, requesting that the Florida court exercise its discretion under the Declaratory Judgment Act to abstain from entertaining the Insurers' anticipatorily-filed declaratory action there in favor of this Washington action.<sup>30</sup> The Insurers' filed their pending motion to stay and transfer this action later the same day, without referencing the filing of North Star's and Eastern's motions to dismiss the Florida action earlier that day.<sup>31</sup>

The Insurers' filed their opposition to North Star's and Eastern's motions to dismiss the Insurers' Amended Complaint in Florida on November 18, 2021.<sup>32</sup> In that opposition, the Insurers argue that the Florida district court "*is the appropriate court to decide whether the second-filed suit must be dismissed, stayed, transferred and/or consolidated,*" citing *Collegiate Licensing Co. v. Am. Cas. Co. of Reading, Pa.*, 713 F.3d 71, 78 (11<sup>th</sup> Cir. 2013).<sup>33</sup> The Insurers also request in their opposition that the Florida district court "*issue an order enforcing the first-filed rule, including an order enjoining the Assureds from prosecuting their second-filed suit in the Western District of Washington, transferring the second-filed suit to this Court, and consolidating it with this action.*"<sup>34</sup>

The Insurers served their first requests for production of documents on North Star in the Florida action on November 9, 2021.<sup>35</sup> North Star served its first requests for

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<sup>30</sup> Stahl Decl., Exs. A-D.

<sup>31</sup> (Dkt. 9).

<sup>32</sup> Stahl Decl., Ex. E.

<sup>33</sup> *Id.* at 32-33.

<sup>34</sup> *Id.* at 32.

<sup>35</sup> Stahl Decl. ¶ 5.

1 production of documents on the Insurers in the Washington action on November 18.<sup>36</sup>

## 2 ARGUMENT AND AUTHORITIES

### 3 A. The Court Should Deny the Insurers' Motion and Wait for the Florida 4 District Court to Rule Whether or Not it Will Entertain the Insurers' 5 Anticipatorily-Filed Declaratory Action There.

6 North Star would be happy to have either this Court or the Florida district  
7 court determine the most appropriate forum for the adjudication of this coverage dispute  
8 in light of the factual and procedural background set forth above. But all parties  
9 acknowledge that the Florida district court is the appropriate court to decide that question.  
10 *See, e.g., Collegiate Leasing Co.*, 713 F.3d at 78; *Alltrade, Inc.*, 946 F.2d at 628; Motion (Dkt. 9-  
11 11). The Insurers' motion here is misplaced. The Insurers are not entitled to "two bites of  
12 the apple" on the question of the appropriate forum for the adjudication of this dispute.<sup>37</sup>  
13 The Insurers' motion accordingly should be denied pending the Florida district court's  
14 determination of whether it will entertain, or rather exercise its discretion to abstain from  
15 entertaining, the Insurers' anticipatorily-filed declaratory action there. In the interim, the  
16 Insurers will suffer no prejudice proceeding with document discovery in both forums.

## 17 CONCLUSION

18 For the foregoing reasons, North Star respectfully requests that Defendants'  
19 Motion to Stay Proceedings and Transfer Action to the Northern District of Florida be  
20 denied.

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24 <sup>36</sup> Stahl Decl. ¶ 6.

25 <sup>37</sup> Were this Court inclined to consider the Insurers' motion now, before the Florida district court's  
26 determination of the pending motions there, then North Star would incorporate by reference the  
arguments and authorities set forth in its motion to dismiss the Florida action. *See* Stahl Decl., Exs. A-C.

1 DATED this 22nd day of November, 2021.

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26

**CERTIFICATE OF SERVICE**

I hereby certify that on November 22, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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s/ J. David Stahl  
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